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Amendment 2 to RFA-186-02-20

Governance Reform and Sustainable Partnerships - Romania

This amendment does not alter the RFA. This amendment attempts to respond to a number of questions concerning the issue of “fee” or “profit” by providing the following explanation and clarification.

Background

USAID cooperative agreements and grants to U.S. entities incorporate USAID Regulation 22CFR226 entitled “Administration of Assistance Awards to U.S. Non-Governmental Organizations.”

Types of assistance awards include grants and cooperative agreements. An assistance award is a distinctly different type of transaction than a contract for goods or services. For some explanation of the differing nature of contractual versus assistance instruments and for background information concerning USAID’s selection of the type of instrument, reference: USAID Automated Directive System (ADS) chapters 303.5.1 and 304. On USAID’s website, ADS 304 includes a link to USAID General Notice dated 8/17/2000 entitled “Choosing Between Acquisition and Assistance Instruments.”

While the acronym “NGO” is often used to refer to non-profit organizations, it actually applies to any type of *non-governmental* entity. The USAID glossary defines and NGO as: Any non-governmental organization or entity, whether non-profit or profit-making, receiving or providing USAID-funded assistance under an assistance instrument (grant or cooperative agreement).

Subpart E of 22CFR226 is entitled “Special Provisions for Awards to Commercial Organizations” and consists of Sec. 226.80, Sec. 226.81 and Sec. 226.82:

Sec. 226.80 Scope of subpart.

This subpart contains additional provisions that apply to awards to commercial organizations. These provisions supplement and make exceptions for awards to commercial organizations from other provisions of this part.

Sec. 226.81 Prohibition against profit.

No funds shall be paid as profit to any recipient that is a commercial organization. Profit is any amount in excess of allowable direct and indirect costs.

Sec. 226.82 Program income.

The additional costs alternative described in Sec. 226.24(b)(1) may not be applied to program income earned by a commercial organization.

Explanation and Clarification

“Commercial organizations” are profit-making concerns.

“Awards to Commercial Organizations” refers to assistance awards (grant or cooperative agreement) to profit-making concerns. Reg 226 covers assistance awards to U.S. NGOs and its subpart E adds additional provisions concerning (assistance) awards to commercial organizations.

Sec 226.81 provides supplemental information to commercial concerns by stating that profit will not be paid to a commercial concern that is the recipient of an assistance award. In other words, this section is informing a commercial concern that it must forgo profit if it wishes to be awarded a grant or cooperative agreement.

Allowable direct costs under an assistance award may include an assistance subaward made by the recipient to a sub-recipient. As an assistance type of transaction, the sub-recipient cannot be paid profit and the recipient cannot be paid its own profit on top of the amount of the subaward. Neither party may be paid profit.

Allowable direct costs under an assistance award may include the procurement of goods or services by the recipient from a contractor/supplier. As it is a contractual type of transaction, the contractor may include profit in its overall reasonable price for the goods or services. The contractor would not be expected to forgo profit in order to sell its product or services to the recipient of a USAID cooperative agreement. Under the USAID cooperative agreement, the recipient could not of course be paid its own profit on top of the contract/procurement price.

It is the nature of the “transaction” (ie. Assistance versus Contractual) and not the type of NGO, that determines whether profit can be paid. That is true at any tier of the Cooperative agreement (Recipient, sub-recipient, sub-recipient of a sub-recipient, contractor, subcontractor, etc.)

Some concern has been expressed that, for instance, a profit-making concern would use a non-profit organization as a front, just so the profit-making concern can make a profit. Agreement officer’s response: Only contractors providing goods or services can be paid profit. Cooperative agreements may in some cases have a considerable contracting component, where it makes programmatic sense and so long as the primary purpose of USAID’s support remains the transfer of funds to the recipient in order to accomplish a public purpose of support or stimulation. If the principle purpose of an application is to provide USAID with services, then we would not award a cooperative agreement because it would be contractual in nature and would not represent the type of program that USAID hopes to identify through this RFA.

It is naturally the responsibility of the recipient to carefully consider the information provided in the RFA, including the sort of program USAID wishes to support and the evaluation factors, when preparing its application.

[End of Amendment 2]